A barbed-wire fence, therefore, was deemed to come within that class of sources of injury as to which no averment of negligence or of knowledge of probable injury is necessary, as the following: a poisonous yew-tree, *Crowhurst* v. *Amersham Burial Board*, 4 Ex. D. 5; a filthy drain, *Ball* v. *Nye*, 99 Mass. 582; an open pit, *Growcott* v. *Williams*, 32 L. J., 2 B. 237; a rusty wire-cable fence, *Firth* v. *Bowling Iron Co.*, 3 C.P.D. 254; a reservoir, *Ryland* v. *Fletcher*, L.R., 3 H.L. 330.

FROM THE LECTURE ROOM.

These notes were taken by students from lectures delivered as part of the regular course of instruction in the school. They represent, therefore, no carefully formulated statement of doctrine, but only such informal expressions of opinion as are usually put forward in the class room. For the form of these notes the lecturers are not responsible.

TRANSFER OF CHOSES IN ACTION. (*From Professor Ames' Lectures.*) — In England, by the Statute 36 and 37 Vic., c. 66, § 25, rule 6, the legal right to a chose in action is transferable. Before the passage of this act, however, and in jurisdictions where it is not in force, conflicting decisions have been reached in cases where the obligee of a chose in action has attempted to make a gift of it to another.

In Fortescue *v.* Barnett (3 M. & K. 36) the obligee of a life-insurance policy by deed assigned and transferred the policy to F. It was held that the gift of the policy was complete without delivery; F. had a perfect title. This case has been followed by later English cases. 14 Ch. D. 179.

In the case of Edwards *v.* Jones (1 M. & C. 226) the obligee of a bond indorsed upon it an assignment to E., "with full power for said E. to sue thereon," and delivered the bond to E. It was held that this was an imperfect gift, and the donee took nothing. Edwards *v.* Jones has been followed in England, Milroy *v.* Lord (4 DeG., F., & J. 264). Thus, in that jurisdiction a distinction is made between an insurance policy and other choses in action.

On the other hand, in the United States generally no such distinction has been made. The rule is that a gift accompanied by a delivery of the instrument passes the legal title; while without delivery no interest passes. (Grover *v.* Grover, 24 Pick. 261; and note to same in Ames, Cases on Trusts, 110.) The American rule, therefore, is directly opposed to the rule of Edwards *v.* Jones.

It is suggested that the true solution of this question is the following: when the donor gives the instrument to the donee, intending to make a complete gift, there is a valid transfer by way of an implied execution of an irrevocable power of attorney to sue in the name of the donor. Thus the right of the donee is not equitable, but is legal.

This suggestion has not been adopted by the courts; but it seems to have the merit of carrying out the intention of the parties, and reaching a highly desirable result (as is shown by the English statute and the American decisions, which reach the same end by another course of reasoning) without doing violence to any legal principles.

It is by no means a new idea. A power of attorney executed for a consideration gives a right to sue in the name of the transferrer of the chose in action.

1 Lilly Abr. 103; 2 Bl. Com. 442; 2 Story Eq. Juris. § 1056; Co. Lit. 232 B, Butler's note; 8 T.R. 571; L.R. 2 C.P. 308, 309.